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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-141
<b>Regulation title</b>	Family Access to Medical Insurance Security Plan (FAMIS): Coverage for pregnant women: FAMIS MOMS
<b>Action title</b>	FAMIS MOMS
<b>Document preparation date</b>	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an "emergency situation" as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to mandates in the Virginia Appropriations Act (the *2005 Acts of Assembly, Chapter 951 Item 324 L*) that must be effective within 280 days from the date of its enactment and these regulatory changes are not otherwise

exempt under the provisions of the *Code* § 2.2-4006. To enable the Director, in lieu of the Board of Medical Assistance Services (BMAS), to comply with changes in the Virginia Appropriation Act, he must adopt these regulatory changes as an emergency action. Since the Department of Medical Assistance Services (DMAS) intends to continue regulating the issue contained in this emergency regulation past the effective period permitted by this emergency action, it is also requesting approval of its Notice of Intended Regulatory Action in conformance with § 2.2-4007.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Family Access to Medical Insurance Security Plan: Coverage of pregnant women: FAMIS MOMS (12 VAC 30-141-810 to 1660) and also authorize the initiation of the permanent regulations promulgation process provided for in § 2.2-4007.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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The purpose of this action is to implement a program to provide health care coverage to pregnant women with income over the Medicaid limit but less than or equal to 150 percent of the Federal Poverty Level utilizing Title XXI funds.

### Legal basis

*1) Please confirm that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

*2) Please indicate that the regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.*

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The *Code of Virginia* (1950) as amended, § 32.1-351, grants to the BMAS the authority to administer and amend the Title XXI Plan (FAMIS). The *Code of Virginia* (1950) as amended, § 32.1-351(K), authorizes the Director of DMAS to “adopt, promulgate and enforce such regulations pursuant to the Administrative Process Act (§ 2.2-400 et. seq.) as may be necessary for the implementation and administration of the Family Access to Medical Insurance Security Plan.” The 2005 Appropriations Act, Chap. 951, Item 324(L) mandated that DMAS promulgate regulations to “expand medical coverage to pregnant women who are over the age of 19 with annual family income in excess of the Medicaid limit but less than or equal to 150 percent of the Federal Poverty Level.” Section 2102(a)(7) of the federal Social Security Act requires states “to assure the quality and appropriateness of care” in Title XXI SCHIP programs. Additionally, these emergency regulations are not otherwise exempt under the COV § 2.2-4006.

## Substance

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

Coverage of pregnant women with income above the Medicaid limit but less than or equal to 150 percent of the Federal Poverty Limit (FPL) represents a new population of individuals to be covered by Virginia's Title XXI program. Therefore, 12 VAC 30-141-810 to 1660 are new regulations specifically developed to support the FAMIS MOMS program. Because FAMIS MOMS is part of Virginia's Title XXI program, these regulations are closely modeled after the existing FAMIS regulations (12 VAC 30-141-10 to 660). In many sections the only difference between the new FAMIS MOMS regulations and the existing FAMIS regulations is the name of the program or the reference to a pregnant woman instead of to a child. Some elements in the FAMIS MOMS definition section (12 VAC 30-141-810) reflect additions to, or deletions from, the definitions provided in 12 VAC 30-141-10 (FAMIS Definitions).

Because Medicaid currently covers pregnant women with income less than or equal to 133 percent of the Federal Poverty Level (FPL), the additional pregnant women covered by FAMIS MOMS (133% up to 150% FPL) is expected to be small. Therefore, regulations 12 VAC 30-141-900 D (Eligibility requirements - Income), 12 VAC 30-141-960 (Co-payments), and 12 VAC 30-141-1000 (Benefit package) are modeled after the Medicaid program for pregnant women. This similarity to the much larger Medicaid program is intended to provide access to comprehensive health care services while minimizing confusion and error rates for local Department of Social Services eligibility workers, medical providers, managed care organizations, and community programs, as they provide services to the small population of women covered by FAMIS MOMS. Certain FAMIS regulations are not being carried over into the FAMIS MOMS regulations because they do not apply to the new program. Specifically, these FAMIS regulations include:

- 12VAC30-141-30 B & C (Duties of the Outreach Oversight Committee)
- 12VAC30-141-100 D(3) (Grandfathered CMSIP children)
- 12VAC30-141-100 G(2a) & (2c) (Four month waiting period)
- 12VAC30-141-110 B (12 months of continuous coverage in FAMIS)
- 12VAC30-141-150 N (Redetermination of eligibility)
- 12VAC30-141-170 (Employer Sponsored Health Insurance)

Finally, changes are made to the mainline FAMIS regulations in sections 12 VAC 30-141-10 (Definitions), 12 VAC 30-141-100 (Eligibility requirements) and 12 VAC 30-14-150 (Application requirements) because the new FAMIS MOMS program has an impact on these areas of the FAMIS program. First, a new definition of "Application for health insurance" is added and the definition of "Child health insurance application" is deleted, as the new application form developed and approved by DMAS will be for use by both children and pregnant women applying for coverage. All other references to "Child health insurance application" are being changed to "application for health insurance" (12 VAC 30-141-150 (B),

(C), (G), and (J) are amended). Second, 12 VAC 30-141-100(G)(2) is amended to exclude a pregnant child from the required four-month waiting period exclusion from FAMIS since the child was covered by health insurance. This will allow a pregnant child to be enrolled in the FAMIS program and receive appropriate prenatal care instead of either delaying services for up to four months or enrolling in the FAMIS MOMS program with no waiting period, but having coverage end two months following the end of the pregnancy. Third, while access to the State Health Plan for state employees remains a barrier to enrollment in both FAMIS and FAMIS Plus, DMAS has received recent confirmation from CMS that participation in Virginia's Local Choice Program no longer meets the current federal definition of access to the State Health Plan. Therefore, access to the State Health Plan through the Local Choice program is not included as a condition of eligibility in the FAMIS MOMS program and is also removed from the mainline FAMIS regulations. Elimination of this unnecessary barrier to enrollment is intended to increase program participation and enhance the coordination and coherence between the two programs. These references are found in 12 VAC 30-141-10 (Definitions), 12 VAC 30-141-100 (C)(7) (Eligibility requirements), and 12 VAC 30-141-120 (A)(2) (Children ineligible for FAMIS).

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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Expansion of coverage to pregnant women with income above the Medicaid limit but less than or equal to 150% of the Federal Poverty Limit, as contained herein, was mandated by the General Assembly through the *2005 Acts of Assembly, Chapter 951, Item 324 L*, thereby eliminating consideration of alternatives. The regulatory changes proposed accomplish the goal of the General Assembly mandate while conforming the FAMIS MOMS regulations as closely as possible to pre-existing FAMIS regulations.

### Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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This regulatory action does not have any impact on the institution of the family and family stability including strengthening or eroding the authority and rights of parents in the education, nurturing, and supervision of their children; encouraging or discouraging economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents, strengthening or eroding the marital commitment; nor increasing or decreasing disposable family income.